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In the Supreme Court of the United States

OCTOBER TERM, 1994

LOREN F. ALLGOOD, PRIVATE,
UNITED STATES ARMY, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court-martial which tried Private Allgood lacked jurisdiction.

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Loren F. Allgood, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Armed Forces entered in this proceeding.

OPINIONS BELOW

The opinion of the United States Court of Appeals of the Armed Forces is reported at 41 M.J. 492 (1995) (Appendix A). The opinion of the United States Army Court of Military Review [now the United States Army Court of Criminal Appeals] is reported at 37 M.J. 960 (A.C.M.R. 1993) (Appendix B).

JURISDICTION

The judgment of the Court of Appeals for the Armed Forces was entered on April 7, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1259(3) (Supp. 1992).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The Constitution of the United States provides in pertinent part:

> Article I, Section 1. "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."
>
> Article I, Section 8. "The Congress shall have Power . . . [9] To constitute Tribunals inferior to the supreme Court . . . [12] To raise and support Armies . . . [14] To make Rules for the Government and Regulation of the land and naval Forces . . . [18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers...."
>
> Article II, Section 1. "[1] The executive Power shall be vested in a President . . . ."
>
> Article II, Section 2. "[1] The President shall be Commander in Chief of the Army . . . ."

The following provisions of the Uniform Code of Military Justice involved in this case provide in pertinent part:

> Article 22(a), 10 U.S.C. § 822(a).
>
> > (a) General courts-martial may be convened by—
> >
> > (1) the President of the United States;

(2) the Secretary of Defense;

. . .

(5) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

. . .

(8) any other commanding officer designated by the Secretary concerned; . . .

Article 25(d)(2), 10 U.S.C. § 825(d)(2).

When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. . . .

Article 36, 10 U.S.C. § 836.

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial . . . may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable.

The following provisions of the Manual for Courts-Martial, United States, 1984 [hereinafter Manual for Courts-Martial], are involved in this case:

Rule for Courts-Martial 201(b).

> (b) *Requisites of court-martial jurisdiction.* A court-martial always has jurisdiction to determine whether it has jurisdiction. Otherwise for a court-martial to have jurisdiction:
>
> (1) The court-martial must be convened by an official empowered to convene it;
>
> (2) The court-martial must be composed in accordance with these rules with respect to number and qualifications of its personnel. As used here "personnel" includes only the military judge, the members, and the summary court-martial;
>
> (3) Each charge before the court-martial must be referred to it by competent authority:
>
> (4) The accused must be a person subject to court-martial jursidiction; and
>
> (5) The offense must be subject to court-martial jurisdiction.

Rule for Courts-Martial 601(a) and (b).

> (a) *In general.* Referral is the order of a convening authority that charges against an accused will be tried by a specified court-martial.
>
> (b) *Who may refer.* Any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor, unless the power to do so has been withheld by superior competent authority.

STATEMENT OF THE CASE

On November 4, 1992, Private E2 [hereinafter Private] Allgood was tried by a military judge sitting as a general court-martial at Fort Dix, New Jersey. Pursuant to his pleas, he was convicted of attempted carnal knowledge, absence without leave, and sodomy in violation of Articles 80, 86, and 125, Uniform Code of Military Justice [hereinafter referred to as U.C.M.J.], 10 U.S.C. §§ 880, 886, and 925 (1988), respectively. The court sentenced Private Allgood to a bad-conduct discharge, forfeiture of all pay and allowances, confinement for 11 months, and reduction to Private E1. The convening authority suspended confinement in excess of 77 days for a period of one year, and approved the remaining sentence as adjudged.

On July 15, 1993, the Army Court of Military Review [now the Army Court of Criminal Appeals][1] ruled that the court-martial that tried Private Allgood lacked jurisdiction and set aside the findings and sentence. *United States v. Allgood,* 37 M.J. 960 (A.C.M.R. 1993) (Appendix B).

The government then requested The Judge Advocate General of the Army to certify[2] two issues to the United States Court of Appeals for the Armed Forces. The Court of Appeals rendered its opinion on April 7, 1995, set aside the decision

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[1] The National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103-337, § 924, 108 Stat. 2831, changed the nomenclature for the military appellate courts. The previous "Court[s] of Military Review" were rechristened as the "Court[s] of Criminal Appeals" and the previous "United States Court of Military Appeals" was renameded as the "United States Court of Appeals for the Armed Forces." *Ryder v. United States,* No. 94-431, U.S. Sup. Ct., June 12, 1995, at n 2, 1995 WL 347378 (U.S.).

[2] Article 67(a)(2) U.C.M.J. authorizes the Judge Advocate General of the Army to "certify" or direct that specific legal issues, already reviewed by the Army court, be reviewed by the Court of Appeals. This is a nondiscretionary review by the Court of Appeals.

of the Army court, and remanded the case to the Army court for further review. *United States v. Allgood*, 41 M.J. at 496-497 (Appendix A).

REASONS FOR GRANTING THE WRIT

In *United States v. Allgood*, the United States Court of Appeals for the Armed Forces erased the century long precedent, established by the Supreme Court of the United States, that courts-martial are creatures whose jurisdiction depends entirely upon absolute conformity with the statute from which such courts-martial come into existence. In so doing, the Court of Appeals created a notion of courts-martial jurisdiction based upon a concept of "military reality" somehow separate from the actual reality of criminal procedure established by the United States Congress and the President in the Uniform Code of Military Justice and the Manual for Courts-Martial.

> [T]his *ad hoc* approach to justice . . . fails to consider this bedrock of all criminal law: No person shall suffer the punishment of a court of law unless that court has jurisdiction over the person and the case. Otherwise, we become like animals. He who is strongest can assert his power over the weak and dare him to complain.

United States v. Allgood, 41 M.J. at 498 (Cox, J., dissenting) (Appendix A). The necessity to rectify this departure from the jurisdictional requirements created and preserved by all three branches of the federal government over the past century, warrants the exercise of this Court's appellate jursidiction.

OVERVIEW

Authority to Convene Courts-Martial

The authority to convene courts-martial is not personal in nature, but is a function of the office of the commander of a unit. *United States v. Williams*, 6 U.S.C.M.A. 243, 19 C.M.R. 369 (1955). The authority to convene general courts-martial is

further limited to the types of commands specified by Article 22(a)(5), U.C.M.J., and those specifically designated by the President or the Secretary of the military service.

This case involves two general court-martial convening authorities: U.S. Army Training Center and Fort Dix, and U.S. Army Garrison, Fort Dix. Neither a training center nor garrison is the type of command automatically bestowed general court-martial convening authority under Article 22 (a)(5), U.C.M.J. Accordingly, both U.S. Army Training Center and Fort Dix and U.S. Army Garrison, Fort Dix, rely solely upon secretarial designation for their respective authority to convene general courts-martial. (Appendices D and E; see Appendix B.) Absent such authority, both commands would have to forward charges against assigned personnel to higher commands who possessed the requisite authority to refer such charges for trial to general courts-martial.

Statement of Facts

U.S. Army Training Center and Fort Dix was a command which operated basic training and advanced individual training for several years at Fort Dix, New Jersey. However, pursuant to the Base Closure and Realignment Act, Public Law No. 100-526, 102 Stat. 2623 (1988), all active component training activities had to be terminated before October 1, 1992. *See* Appendix C; *see also National Federation of Federal Employees v. United States,* 905 F.2d 400, 402 (D.C. Cir. 1990); 54 Fed.Reg. 19600-01. Prior to the October 1 deadline, nearly all basic training and advanced individual training units were deactivated or transferred to other installations, 89% of the military and 54% of the civilian personnel work forces were transferred or eliminated, and the mission of Fort Dix was changed from the training of active duty forces to maintaining training facilities for use by reserve forces. (Appendix C.) On October 1, 1992, the installation was transferred from the command and control of the Training and

Doctrine Command [commonly known as TRADOC] to Forces Command [commonly known as FORSCOM], and the command was redesignated from U.S. Army Training Center and Fort Dix to United States Army Garrison, Fort Dix.

On October 30, 1992, the charges in this case were forwarded to Colonal Michael Warner, the Commander, United States Army Garrison, Fort Dix, for disposition. *United States v. Allgood*, 37 M.J. at 961 (Appendix B). Under his general court-martial convening authority as commander of United States Army Garrison, Fort Dix, Colonel Warner referred the charges to a court convened by court-martial convening order 1, dated January 23, 1992. *Id.* However, that court-martial was convened by the former commander of U.S. Army Training Center and Fort Dix, Major General John P. Herrling. *Id.*

On appeal, the Army court ruled that the referral was defective because U.S. Army Training Center and Fort Dix and its general court-martial convening authority terminated on October 1, 1992, and the commander of U.S. Army Garrison, Fort Dix was not the successor-in-command of U.S. Army Training Center and Fort Dix within the meaning of Manual for Courts-Martial, Rule for Courts-Martial [hereinafter R.C.M.] 601(b). The court explained that as the first commander of a **new** convening authority, Colonel Warner had no predecessor, and should have convened his own court-martial to try the charges in this case. The Army court concluded that because statute and regulation precluded referral of the charges to a court convened by another command, the court which tried Private Allgood lacked jurisdiction.

Following certification by the Judge Advocate General of the Army, pursuant to Article 67(a)(2), U.C.M.J., the Court of Appeals reversed the decision of the Army court. The Court of Appeals held that in spite of the action of the Secretary of the Army, "military reality was that Major General Herrling was the predecessor of Colonel Warner for the purposes of

R.C.M. 601(b)." *United States v. Allgood*, 41 M.J. at 495 (Appendix A).

THE COURT-MARTIAL WHICH TRIED PRIVATE ALLGOOD LACKED JURISDICTION.

"A court-martial is the creature of statute, and, as a body or tribunal, it must be convened and constituted in entire conformity with the provisions of the statute, or else it is without jurisdiction." *McClaughry v. Deming*, 186 U.S. 49, 62 (1902). The body of statutes that provides for the convening of courts-martial is the U.C.M.J. The U.C.M.J. allows the President to prescribe rules relative to the jurisdiction of courts-martial and the procedures required before a court-martial may be properly convened and exercise any jurisdictional authority. U.C.M.J. arts. 17-20 and 36. The President has prescribed such rules. R.C.M. Chapters II and V. The exercise of military jurisdiction is governed by such rules. Manual for Courts-Martial, part I, para. 2(b)(1). The exercise of military judicial power in contravention of such rules lacks jurisdiction and is a legal nullity. Judgments pronounced as a result of such an exercise shall not be given effect. *McClaughry v. Deming*, 186 U.S. at 63, 69.[3] Because the court-martial that tried Private Allgood acted in contravention of the Rules for Courts-Martial, and outside the provisions of the U.C.M.J., its judgment is void.

In order for a court-martial to have jurisdiction, each charge before that court-martial must be referred to it by competent authority. R.C.M. 201(b)(3). Any convening authority is competent to refer charges to a court-martial convened by that

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[3] The jurisdiction of a court-martial may be attacked for the first time on appeal or collaterally. *See, e.g., McClaughry v. Deming*, 186 U.S. 49 (1902); R.C.M. 905(e).

convening authority or a "predecessor" convening authority.[4] R.C.M. 601(b). In this case, Colonel Warner did not convene a court-martial to try Private Allgood. Instead, he referred the charges against Private Allgood to a court-martial convened by Major General Herrling. At the time Colonel Warner referred the charges to that court-martial, Major General Herrling was not a "predecessor" but was in fact the former convening authority of a unit distinctly different in mission and name.

Major General Herrling was not a "predecessor" because: (1) his authority to convene general courts-martial was terminated by the Secretary of the Army's redesignation of his command; and (2) Colonel Warner acquired *new*, not successor, convening authority by designation of the Secretary of the Army on October 23, 1992. Major General Herrling, as commander of the U.S. Army Training Center and Fort Dix, lost his authority to convene general courts-martial by the redesignation of his command. *United States v. Allgood*, 37 M.J. at 961-962 (Appendix B); *see United States v. Masterman*, 22 U.S.C.M.A. 250, 46 C.M.R. 250 (1973); *United States v. Cases*, 6 M.J. 950, 952 (A.C.M.R. 1979).

The fact that Major General Herrling was not a "predecessor" to Colonel Warner ultimately is established by the necessity of the Secretary of the Army to specifically designate Colonel Warner's new command, U.S. Army Garrison, Fort Dix, as a general courts-martial convening authority rather than simply rely upon the order providing such authority to U.S. Army Training Center and Fort Dix. (Appendices D and E.)

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[4] In the context of the Rules for Courts-Martial, "predecessor" refers to the previous commander of the same specific unit who exercised the specific convening authority for that unit. *See, e.g., United States v. Gaspard*, 35 M.J. 678, 680 (A.C.M.R. 1992).

Although the Court of Appeals essentially ruled that the Secretary of the Army's actions were merely pro forma, the actual intent of the Army Secretary is manifest in the facts established by the Army court: (1) federal law required the downsizing and reorganization of Fort Dix; (2) the Secretary of the Army eliminated the U.S. Army Training Center, establishing a garrison in its place; and, (3) the Secretary of the Army designated the new command a general court-martial convening authority. See *United States v. Allgood*, 37 M.J. at 961-962 (Appendix B).

Compounding the referral error in this case was the convening authority's violation of Article 25, U.C.M.J. A properly convened court-martial requires the convening authority to personally select the court members and failure to do so is jurisdictional error. *See* U.C.M.J. art. 25; R.C.M. 503 and 504; *United States v. Newcomb*, 5 M.J. 4 (C.M.A. 1978); *United States v. Ryan*, 5 M.J. 97, 101 (C.M.A. 1978); *United States v. England*, 24 M.J. 816, 818 (A.C.M.R. 1987), *pet. denied*, 25 M.J. 483 (C.M.A. 1987); *United States v. Stafford*, 25 M.J. 609 (A.C.M.R. 1987). The convening authority may rely on his staff and subordinate commanders in compiling a list of candidates for court-martial duty, and may even appoint members from another command suggested by a convening authority of that other command, so long as he selects them personally and complies with U.C.M.J. art. 25 (D) (2); *United States v. Gaspard*, 35 M.J. 678, 681 (A.C.M.R. 1992) (citations omitted). However, because the convening authority in this case adopted the court member selections of another convening authority[5] who was not his predecessor, the court

[5] Of the nine members detailed to the court-martial adopted by Colonel Warner, only three were still present at Fort Dix at the time Colonel Warner referral Private Allgood's charges to that court-martial. *See United States v. Allgood*, 37 M.J. at 962, n 2. Article 16(1)(A), U.C.M.J. requires that at least five members be present, after challenges, to conduct a general court-martial.

had no jurisdiction to try Private Allgood and the case must be dismissed. *See Gaspard,* 35 M.J. at 680, 681.

CONCLUSION

The decision of the Court of Appeals denies Private Allgood the protection of individual liberty that is provided by jurisdictional requirements, in favor of the exercise of sovereign power by those in control of Private Allgood—the United States Army. Faced with the pressures created by the Base Closure and Realignment Act, the Court of Appeals created a concept of "military reality" in order to preserve the exercise of a court-martial's authority. This concept was created at the expense of statutory and regulatory requirements designed to define the limits of such authority and to protect the individual liberties of soldiers. The impact of the Court of Appeals' opinion permits a new command, created as a result of military reorganization and downsizing, to refer charges to a court-martial convened by an extinct convening authority.

For the foregoing reasons, this Court should grant review of the judgment of the United States Court of Appeals for the Armed Forces.

Respectfully submitted,

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July 6, 1995

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

No. 93-5022
CMR No. 9202302

UNITED STATES, APPELLANT

v.

LOREN F. ALLGOOD, PRIVATE
U.S. ARMY, APPELLEE

Argued November 10, 1994
Decided April 7, 1995

Counsel

For the United States: *Captain John W. O'Brien* (argued); *Colonel Dayton M. Cramer, Lieutenant Colonel James L. Pohl, Major Kenneth T. Grant, Captain Jane F. Polcen* (on brief); *Captain Lyle D. Jentzer.*

For the accused: *Major Roy H. Hewitt* (argued); *Major Fran W. Walterhouse* (on brief); *Major Michael A. Egan.*

Military Judge: Robert D. Newberry.

Opinion of the Court

SULLIVAN, Chief Judge:

1. On November 4, 1992, the accused was tried by a general court-martial judge sitting alone at Fort Dix, New Jersey. Pursuant to his pleas, he was found guilty of attempted carnal knowledge, absence without leave (2 specifications—159 days and 3 days), and sodomy, in violation of Articles 80, 86, and 125, Uniform Code of Military Justice, 10 USC § 880, 886 and 925, respectively. The military judge sentenced him to a bad-conduct discharge, confinement for 11 months, total forfeitures, and reduction to E-1. Due to a pretrial agreement and clemency, the convening authority suspended for 1 year from the date of trial all confinement in excess of 77 days but approved the remainder of the sentence. On July 15, 1993, the Court of Military Review[1] set aside the findings of guilty and the sentence and authorized an "other trial." 37 MJ 960, 963.

2. The Acting Judge Advocate General of the Army forwarded this case to our Court for review in accordance with Article 67(a)(2), UCMJ, 10 USC § 867(a)(2)(1989), on the following issues:

I

WHETHER THE ARMY COURT OF MILITARY REVIEW ERRED AS A MATTER OF LAW WHEN IT RULED THAT A COMMANDER'S AUTHORITY TO CONVENE GENERAL COURTS-MARTIAL IS TERMINATED WHEN THE COMMANDER'S UNIT IS REDESIGNATED.

II

WHETHER THE ARMY COURT OF MILITARY REVIEW ERRED AS A MATTER OF LAW

[1] This Court was redesignated the United States Court of Appeals for the Armed Forces on October 5, 1994. Pub.L.No. 103-337, § 924, 108 STAT. 2663.

WHEN IT CONCLUDED THAT MAJOR GENERAL HERRLING WAS NOT A PREDECESSOR IN COMMAND OF COLONEL WARNER'S REDESIGNATED UNIT.

We hold that both RCM 601(b), Manual for Courts-Martial, United States, 1984, and Article 25(d)(2), UCMJ, 10 USC § 825(d)(2), were complied with in this case, and, accordingly, this court-martial had jurisdiction to try the accused's offenses. *See generally United States v. Jette*, 25 MJ 16 (CMA 1987).

3. The court below made the following pertinent findings of fact:

> On 19 January 1981, the Secretary of the Army, pursuant to Article 22(a)(8)[2] UCMJ, designated the Commander, United States Army Training Center and Fort Dix, a general court-martial convening authority. Colonel (COL) Michael Warner assumed command of the United States Army Training Center and Fort Dix from Major General (MG) Herrling on 3 September 1992. On 1 October 1992, the Training Center was redesignated as United States Army Garrison, Fort Dix. Colonel Warner remained in command of United States Army Garrison, Fort Dix. On 23 October 1992, the Secretary of the Army, pursuant to Article 22(a)(8), UCMJ, designated the Commander, United States Army Garrison, Fort Dix, a general court-martial convening authority. On 30 October 1992, COL Warner, in his capacity as Commander, United States Army Garrison, Fort Dix, referred the appellant's case to a general court-martial. In so doing, the charges were referred to the court-martial with panel members selected by MG Herrling and convened by Court-Martial Convening Order

[2] Our holding in this regard makes it unnecessary to address the first issue certified by the Acting Judge Advocate General.

> Number 1, dated 23 January 1992, United States Army Training Center and Fort Dix [hereinafter CMCO 1]. On 11 December 1992, COL Warner issued a Memorandum for Record, noting that prior to referring the appellant's case pursuant to CMCO 1, he adopted the panel selections of his "predecessor," MG Herrling.

37 MJ at 961.

Introduction

4. The Court of Military Review held that the accused's court-martial did not have jurisdiction to try him because it was improperly convened. *Id.* at 962. *See generally McClaughry v. Deming,* 186 U.S. 49, 62 (1902). That court reached this conclusion for two reasons. First, it held that this court-martial was convened by Commander, Army Training Center and Fort Dix (MG Herrling), who had lost his power to convene or create courts-martial at the time of referral and who was not a predecessor in command to the actual convening authority in this case, Commander, United States Army Garrison, Fort Dix (COL Warner). *See United States v. Cases,* 6 MJ 950, 952 (ACMR 1979). Second, it held that the actual convening authority (COL Warner) in this case "did not personally select the members" of this court-martial as required by Article 25(d)(2). 37 MJ at 962. In sum, the court below held that RCM 601(b) did not and could not lawfully permit his court-martial to be convened as was done in this case. *See also* RCM 103(6).

5. The Acting Judge Advocate General of the Army has questioned the above holdings of the Court of Military Review. Government appellate counsel, in their brief supporting this certified issue, suggest that the court below erred when it held that this court-martial was convened by a court-martial authority (Commander, Army Training Center and Fort Dix) whose power to convene courts-martial had been "terminated." 37 MJ at 962. Second, they suggest that the court below erred in holding that MG Herrling was not a predecessor in command to COL Warner

for purposes of RCM 601(b). 37 MJ at 962. *See also* RCM 103(6). We hold that the Court of Military Review erred in its conclusions noted above but for reasons somewhat different from those suggested by government appellate counsel.

I

6. Our starting point in resolving the certified questions is the Uniform Code of Military Justice, in particular, Article 22(a)(8), which provides:

> **§ 822. Art. 22. Who may convene general courts-martial**
>
> (a) General courts-martial may be convened by—
>
> • • •
>
> (8) any other commanding officer designated by the Secretary concerned[.]

We also note that no other provision of the Uniform Code of Military Justice expressly provides *how* a court-martial should or must be convened. However, Article 36, UCMJ, 10 USC § 836, states:

> **§ 836. Art. 36. President may prescribe rules**
>
> (a) *Pretrial*, trial, and post-trial *procedures*, including modes of proof, for cases arising under this chapter *triable in courts-martial*, military commissions and other military tribunals, and procedures for courts of inquiry, *may be prescribed by the President by regulations* which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(Emphasis added.) In this light, we further note that the President has clearly delineated how a court-martial should be convened in the Manual for Courts-Martial, United States, 1984.

7 RCM 204(a) provides: "In general. A court-martial is created by a convening order of the convening authority." RCM 204(d) further provides:

(d) *Contingent orders.*

(1) *In general and special court-martial.* A convening order for a general or special court-martial shall designate the type of court-martial and detail the members and may designate where the court-martial will meet. If the convening authority has been designated by the Secretary concerned, the convening order shall so state.

Discussion

See Appendix 8 for a suggested format for a convening order.

Nevertheless, this Court has made clear that not every failure to follow this type of regulation in the creation of the convening of a court-martial is jurisdictional and void that court-martial's findings and sentence. *See United States v. Ortiz*, 24 MJ 181, 191 (CMA 1987); *United States v. Short*, 25 MJ 25, 28 (CMA 1987), *cert. denied*, 484 U.S. 1054 (1988); United States v. Emerson, 1 USCMA 43, 42, 1 CMR 43, 42 (1951); *see also United States v. King*, 28 MJ 397, 399 (CMA 1989).

8 Turning to the present case we note that both the Court of Military Review and government appellate counsel have focused on a different Manual rule to determine whether this court-martial was properly convened. They rely on RCM 503(b), which states: "Who may refer. Any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor, unless the power to do so has been withheld by superior competent authority." They implicitly agree that a convening authority need not comply with the requirements of RCM 204 noted above when he refers a case to a court-martial

already conveyed by his predecessor. They expressly disagree; however, whether MG Herring can lawfully be considered a "predecessor" to the accused, a convening authority, COL Wamer, for purposes of this rule.

9. We agree with the argument of government appellate counsel on this point. See generally United States v. Yates, 25 MJ 16 (CMA 1987); 60 (CMA 1989). United States v. Jones, 23 MJ 10 (CMA 1987). MG Herring issued the challenged convening order in this case (CMCO Number 1) on January 23, 1995, as Commander, United States Army Training Center and Fort Dix, and as authorized by General Orders Number 3 from the Secretary of the Army. COL Warner succeeded to command of U.S. Army Training Center and Fort Dix on September 3, 1995, prior to referral on October 30, 1995, of this case to trial. Moreover, he was in command of this unit when it was "reassigned," United States Army Garrison, Fort Dix, on October 1, 1995, by General Orders No. 53 (1 Oct 95), and it was given general court-martial authority by the Secretary of the Army on October 23, 1995. 75 MJ at 196. Finally, the charge sheet reflects that he referred this case to trial as Commander, United States Army Garrison, Fort Dix, New Jersey. Regardless of the technical implication of service regulations in these circumstances, we hold that the military reality was that MG Herring was a predecessor commander for purposes of RCM 601(b). See United States v. Yates, supra; cf. United States v. Mazzeramm, 25 USCMA 520, 523, 46 CMR 520, 523 (1973) (although facts show redesignation under new command, continuing jurisdiction specifically retained in zero-strength predecessor command).

10. In any event, even if RCM 903(b) was not applicable in this case, we would not reverse this conviction on the basis that this court-martial was improperly convened. See United States v. Cayhurst and United States v. Chantz, both supra at 17. Normally, RCM 504 would require that the convening authority—Commander, United States Army Garrison, Fort Dix—issue a

convening order delailing members to sit on this court-martial. COL Wright clearly did not do so in accordance with sections (a) and (b) of this rule but, instead, he referred this case to a court-martial convened by another commander. This action, while unusual in terms of legislative form or procedure, did not have codal or jurisdictional significance. See United States v. Wilkins, 29 MJ 358 (CMA 1990); see also United States v. King, supra. COL Wright, at the time of referral, clearly had authority under Article 22(a)(8) to convene a court-martial and refer a case to it. Moreover, there was not objection by the defense to this procedure and no prejudice has been shown to have affected the accused as a result of it. United States v. Timberlake, 18 USCMA at 42, 18 CMR at 42.

II

11. An additional question raised by the Court of Military Review's decision in this case is whether Article 22(b)(5) was violated by COL Wright's referral of this case to a court-martial previously convened by MG Herring. That statute provides:

> (5) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

While RCM 103(b) authorizes an exception to the legislative convening requirements of RCM 204, we are not convinced that it can eliminate the statutory requirement for selection of members in Article 22(b)(5). See generally United States v. McFadden,

19 USCMA 415, 418, 42 CMR 14, 17 (1970). Accordingly, we must review the conclusion of the court below that Article 32(a)(3) was violated in this case which resulted reversal of this conviction.

15. Initially, we note that the convening authority, COL Wrangt, stated the following in his referral of this case to trial: "Referred for trial to the general court-martial convened by Court-Martial Convening Order Number 1, Headquarters, US Army Training Center and Fort Dix, Fort Dix, New Jersey, dated 23 January 1995." Moreover, that convening order listed the names, ranks, and units of the detailed members of his command or designated command who were to sit in this case. Finally, in a post-trial memorandum for record, this same convening authority stated on letterhead for the United States Army Garrison:

AFZT-CO Dec 11 1995

MEMORANDUM FOR RECORD

SUBJECT: Court Martial Panel in US v. PVT Lotan E. Allgood, 529-87-1031

Prior to referring this case to Court Martial Convening Order Number 1, Headquarters US Army Training Center and Fort Dix, dated 23 January 1995, I adopted the panel selections of my predecessor, MG John P. Herring.

(Emphasis added.)

13. In considering this record, we recognize that "adoption," at least in the Army context, is generally understood to include personal evaluation and selection of court-martial members as required by Article 32(a)(3). See United States v. England, 24 MJ 818, 819 (ACMR 1987), and cases cited therein. We think this construction of the record is particularly apt where the defense did not object at trial on the basis of Article 32(a)(3) and develop a

record supporting a contrary conclusion or interference. See United States v. Knox, 58 MJ at 93 ("belated assertion of regulatory violation "is at best speculative"). Cf. United States v. Carpenter, 35 MJ 978, 981 (ACMR 1992) (assistant trial counsel's comment underscored interference of personal selection). In addition, the Court of Military Review's finding of no personal selection in this case was based on extra-record evidence that some of most of the members detailed to the court were not at Fort Dix at the time this case was tried. See 37 MJ at 965 n.5. However, the ability of a detailed member to appear for trial provides no rational interface concerning their suitability as court-members or whether they were previously properly selected as court-members by the convening authority. Accordingly, it is our view that the record before us simply supports a conclusion that COL Warner did personally select the members of this court-martial as required by Article 25(d)(2). See United States v. Nixon, 33 MJ 433, 434 (CMA 1991).

The decision of the United States Army Court of Military Review is set aside. The record of trial is returned to the Judge Advocate General of the Army for remand to the Court of Criminal Appeals for further review under Article 66, Uniform Code of Military Justice, 10 USC § 866.

Judge WISS concurs.

CIERKE, Judge, with whom CRAWFORD, Judge, joins (concurring):

14. The first certified question raises two subsidiary issues: (1) Did the redesignation of the unit terminate the secretarial designation of the unit commander as a general court-martial convening authority; and (2) Did the redesignation terminate the existence of the unit?

15. I agree with the majority that the first subsidiary question need not be answered in this case. ___ MJ at (12) n.2). Colonel

Warner was a general court-martial convening authority in his own right by virtue of the secretarial grant of authority on October 23, 1995. See 56 Ml 960, 961 (ACMR 1993). This new secretarial designation preceded his retirement of this case to a general court-martial on October 30. Even if the redesignation of the unit extinguished the commander's authority to convene general courts-martial as of October 1, that authority was restored by the secretarial grant of authority on October 23, 1995.

10. The second suspicious question is directly related to resolution of certified Issue II. If the unit ceased to exist upon redesignation and was replaced by the United States Army Garrison, Fort Dix, then Major General (MG) Herring was not a predecessor in command. If the unit continued to exist under a new name, then MG Herring was a predecessor in command under RCM 601(b), Manual for Courts-Martial, United States, 1984.

11. The fundamental flaw in the decision of the court below is its conclusion that the United States Army Training Center and Fort Dix was "discontinued." 56 Ml at 962. In Army terminology, "redesignation" is a change of name. See Army Regulation 310-25, Military Implications: Dictionary of United States Army Terms 130 (15 May 1980). In this case the unit was renamed, not discontinued, just as this Court and the Courts of Military Review were renamed on October 2, 1994, without being discontinued. See n. 1 of the Opinion of the Court. Since the unit continued to exist under a new name, MG Herring was a predecessor in command.

18. Accordingly, I join the Chief Judge in holding that COL Warner had authority to refer this case to trial and that COL Warner's adoption of the panel selected by MG Herring complied with RCM 601(b).

COX, Judge (dissenting):

19. This case turns on two salient facts, as found by the Court of Military Review:

> When the Secretary of the Army redesignated the United States Army Training Center and Fort Dix as the United States Army Garrison, Fort Dix, the general court-martial convening authority of the Commander, United States Army Training Center and Fort Dix, was terminated. The commander of the United States Army Garrison, Fort Dix, became a new general court-martial convening authority by the grant of authority from the Secretary of the Army on 23 October 1995, and was not a successor in command of the United States Army Training Center and Fort Dix.

37 MJ 960, 965 (1993).

50. The first fact—that the general court-martial convening authority of the commander of the training center was terminated—makes sense to me. Otherwise, the Secretary of the Army would not have found it necessary to specifically grant the power to the new commander of the Army Garrison. It should be noted that, without this express grant of authority, the colonel who commanded United States Army Garrison, Fort Dix, would not have enjoyed the power to convene general courts-martial by statute. See Art. 22, Uniform Code of Military Justice, 10 USC § 822.

51. The second fact, of paramount importance, is that the Secretary of the Army did, in fact, designate the Commander of the United States Army Garrison, Fort Dix, as a General Court-Martial Convening Authority. Thus, had he followed the rules, he could have lawfully convened a general court-martial and referred this case to it.

52. Based upon these two facts, I conclude that these charges could not have been referred to "a court-martial convened by . . . a predecessor," convening authority. RCM 601(d), Manual for Court-Martial, United States, 1984. There was no predecessor convening authority; indeed, there was no preceding command. If there was none, none can be created de facto.

53. Furthermore, I conclude that the charges were not referred to a general court-martial convened by the new convening authority. Granted, it can be argued that, even though the procedure used was highly irregular, the court-martial nevertheless was de facto (if not de jure) convened by reference to the old convening order and that the charges were properly referred to it. I could readily accept that argument except for one other fundamental proposition of law stated by the court below:

> A court-martial is properly convened when an authorized convening authority personally selects the members to sit as a court-martial. The court-martial is created by a convening order of the convening authority.
>
> RCM 204(a); United States v. Graffort, 35 MJ 305, 310 (ACMR 1987). . . .

37 MJ at 965 (emphasis added) (footnote omitted).

54. In this case it is apparent that the convening authority did not incidentally or inadvertently "personally select" the members by his referral because it is not disputed that the majority of the members on the order were no longer at Fort Dix at the time. See United States v. Allgood, supra at 965 n.5. In addition, since there was no predecessor in command, no "authorized" convening authority selected the members.

55. Thus, I conclude, as did the Court of Military Review, that the accused's court-martial lacked jurisdiction to try him. I realize that two colleagues find comfort in the fact that Colonel Warner was indeed a proper, general court-martial convening authority and, thus, we should not be bothered by the mere technicalities which impede the lawful prosecution of this accused for his misdeeds. My only retort to this ad hoc approach to justice is that it fails to consider this bedrock of all criminal law: No person shall suffer the banishment of a court of law unless that court has jurisdiction over the person and the case. Otherwise, we become like animals

He who is the strongest can assert his power over the weak and date him to complain.

I respectfully dissent and would uphold the decision of the United States Army Court of Military Review setting aside the findings and sentence.

APPENDIX B

U.S. ARMY COURT OF MILITARY REVIEW

ACMR 9502302

United States, appellee,

v.

Private E2 Loren E. Allgood, 270-87-1031,

United States Army, appellant.

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12 July 1993.

Reconsideration Denied Aug. 16, 1993

Accused was convicted by general court-martial, United States Army Garrison, Fort Dix, R.D. Nempetty, J., of attempted carnal knowledge, desertion without leave, and sodomy. The United States Army Court of Military Review, Creau, Senior Judge, held that commander could not adopt court selected by prior commander of army training center before redesignation as Army Garrison. Set aside.

For Appellant: Captain Roy H. Hewitt, JACC (signed); Major Ezra W. Wallerhouse, JACC (on brief).

For Appellee: Captain Jane E. Polcen, JACC (signed); Colonel Dayton M. Cramer, JACC, Major Joseph C. Swetnam, JACC, Captain Roger L. Walters, JACC (on brief).

Before CREAN, WERNER, and GONZALES, Appellate Military Judges.

OPINION OF THE COURT

CREAN, Senior Judge:

The appellant was found guilty, in accordance with his pleas, by a military judge sitting as a general court-martial, of attempted carnal knowledge, two specifications of sodomy, in violation of Articles 80, 85, and 125, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 885, and 925 (1988) [hereinafter UCMJ]. The appellant was sentenced to a dishonorable discharge, confinement for eleven months, forfeiture of all pay and allowances, and reduction to Private E1. The convening authority, pursuant to a pretrial agreement, approved the sentence as adjudged but suspended confinement in excess of seventy-seven days until 3 November 1993.

This case presents a very important issue for staff judge advocates, especially with base realignments and reductions in the Armed Forces. The appellant contends that the court-martial that convicted him did not have jurisdiction because it was improperly convened by the convening authority. We agree and set aside the findings of guilty and the sentence.

The initial facts are uncomplicated and present a common scenario in the Army. On 21 January 1987, the Secretary of the Army, pursuant to Article 25(a)(8), UCMJ, designated the Commander, United States Army Training Center and Fort Dix, a general court-martial convening authority. Colonel (COL) Michael Wagner assumed command of the United States Army Training Center and Fort Dix from Major General (MG) Herring on 3 September 1992. On 1 October 1992, the Training Center was redesignated as United States Army Garrison, Fort Dix. Colonel Wagner remained in command of United States Army Garrison, Fort Dix. On 23 October 1992, the Secretary of the Army, pursuant to Article 25(a)(8), UCMJ, designated the Commander, United States Army Garrison, Fort Dix, a general court-martial convening authority. On 30 October 1992, COL

Warner, in his capacity as Commander, United States Army Garrison, Fort Dix, retained the appellant's case to a general court-martial. In so doing, the charges were referred to the court-martial with panel member selected by MC Herring and convened by Court-Martial Convening Order Number 1, dated 23 January 1995, United States Army Training Center and Fort Dix [hereinafter CMCO 1]. On 11 December 1995, COL Warner issued a Memorandum for Record, noting that prior to referring the appellant's case pursuant to CMCO 1, he adopted the panel selections of his "predecessor," MC Herring.

A court-martial is a creature of statute, and, as a body of tribunal, it must be convened entirely in conformity with statute or it is without jurisdiction. McClaughry v. Deming, 186 U.S. 49, 62, 22 S.Ct. 780, 791, 46 L.Ed. 1049 (1902); United States v. Wilson, 53 M.J. 322, 328 (A.C.M.R. 1988). For a court to be property convened, three requirements must be met: first, a convening authority authorized to convene the court; second, a court-martial convened by that convening authority; and third, preferred charges which have been received by the convening authority for disposition. Unless all three requirements are present, the court-martial has no jurisdiction. Rule for Courts-martial 103 [hereinafter R.C.M.]; United States v. Cashwell, 35 M.J. 678, 680 (A.C.M.R. 1992); United States v. Choy, 33 M.J. 1080, 1083 n. 1 (A.C.M.R. 1992).

A court-martial is properly convened when an authorized convening authority personally selects the members to sit as a court-martial.[1] The court-martial is created by a convening order of the convening authority. R.C.M. 504(a); United States v. Grady, 15 M.J. 1080, 1085 n. 1 (A.C.M.R. 1983); citing United States v. Ryan, 5 M.J. 97, 100-01 (C.M.A. 1978); United States v. Wilson, 53 M.J. 322, 328 (A.C.M.R. 1988).

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[1] Convening is the same as appointing. See W. Winthrop, Military Law and Precedents, p. 27, n. 5 (2d ed. 1920 reprint); United States v. Choy, 33

Zirilloni, 55 M.J. 908, 910 (A.C.M.R. 1987). The convening authority can convene the court either by selecting the members himself or by adopting the selections of a predecessor convening authority pursuant to R.C.M. 503(b). The predecessor convening authority provision provides for the orderly processing of courts-martial when commanders of units change. It is not meant for the adoption of courts convened by the commanders of other units. Crayton, 35 M.J. at 680. Administrative defects in the convening of the court do not deprive the court-martial of jurisdiction. United States v. Whitson, 34 M.J. 533 (C.M.A. 1992); United States v. Crisp, 34 M.J. 181 (C.M.A. 1992).

When a command is discontinued, the commander loses his authority to convene courts-martial under the grant of authority from the Secretary of the Army. United States v. Cruz, 8 M.J. 920, 925 (A.C.M.R. 1979); see United States v. Masterman, 55 U.S.C.M.A. 520, 40 C.M.R. 520 (1973). Even when that is by Judge alone, jurisdiction does not survive a fundamental defect in the convening of the court. Kwan, 2 M.J. at 101.

When the Secretary of the Army redesignated the United States Army Training Center and Fort Dix as the United States Army Garrison, Fort Dix, the general court-martial convening authority of the Commander, United States Army Training Center and Fort Dix was terminated. The commander of the United States Army Garrison and Fort Dix, became a new general court-martial convening authority by the grant of authority from the Secretary of the Army on 23 October 1995, and was not a successor in command of the United States Army Training Center and Fort Dix.

We find that COL Wagner did not personally select the members of the court-martial listed on CMCO 1.[5] As a new

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[5] CMCO 1 was on the letterhead of the "United States Army Training Center and Fort Dix," by order of MG Herring. The disposition on the date of referral of the court members selected by MG Herring and listed on

general court-martial convening authority, COL Wagner had to rely on MG Hertling to relying on the provisions of R.C.M. 601(b), we further find that COL Wagner and his staff Judge Advocate erroneously used the predecessor provision of R.C.M. 601(b) to convene a court-martial for the new convening authority granted to the Commander, United States Army Garrison, Fort Dix. Since COL Wagner never selected members in convening the court-martial, the second jurisdictional requirement was not present and the appellant's court-martial did not have jurisdiction to try him.

In the circumstances herein, COL Wagner could have selected his own court-martial either by selecting those members previously chosen by MG Hertling after examining their qualifications and determining that they met the criteria of Article 25, UCMJ; or he could have selected an entirely new panel of members that he determined met the requirements of Article 25, UCMJ.

Since the court that found the appellant guilty and sentenced him did not have jurisdiction to try the appellant, he has not been but in jeopardy for any offense and may be tried for the offenses of which he was convicted. R.C.M. 907(c)(iv). If the

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CMCO I is evidence that Colonel Wagner did not personally select the members on that order. There were nine primary officer members but only three were still at Fort Dix. Of the ten alternate officer members, only one was still at Fort Dix (a total of ten of fifteen officer members). Of the ten primary enlisted members on CMCO I, only one remained at Fort Dix. Of the ten alternate enlisted members, three were still at Fort Dix (a total of ten of eight enlisted members).

" The Judge Advocate General has provided excellent guidance for staff Judge advocates when a military organization is redesignated, reorganized, or otherwise changes its name. See Dep't of the Army Pam. 27-174, Legal Services: Jurisdiction, 22 September 1986. Staff Judge advocates should be familiar with the provisions of that pamphlet.

appellant is retried, the maximum punishment will be limited to the sentence adjudged at trial. *United States v. Lawson*, 34 M.J. 38 (C.M.A. 1992).

The findings of guilty and the sentence are set aside. An other trial may be ordered by the same or a different convening authority.

Judge WERNER and Judge GONZALES concur.

APPENDIX C'

AFFIDAVIT

I, Major Robert W. North, am the Acting Director of the Base Realignment Office for United States Army Garrison, Fort Dix. I have served in this office since July 1992. Prior to 1 October 1992, my duties included implementing the provisions of the Base Closure and Realignment Act (BRAC) affecting the United States Army Training Center and Fort Dix (USATC & Fort Dix). Since 1 October 1992, my duties include planning and implementing the new mission of United States Army Garrison (USAG), Fort Dix, as a result of the BRAC.

The enclosures summarize various changes to Fort Dix as a result of implementation of BRAC.

Enclosure 1 accurately illutrates the units that were deactivated at or transferred from USATC & Fort Dix pursuant to BRAC. For example: On 6 August 1992, the 36th Transportation Battalion was deactivated, and on 30 September 1992, the 1st Battalion, 26th Infantry moved to Fort Jackson, South Carolina.

Enclosure 2 accurately reflects the reduction in the authorized and assigned permanent party military personnel at USATC & Fort Dix as a result of implementation of BRAC. The chart illustrates the quarterly strength (as of the first day of the quarter) from 1 October 1989 (fiscal year (FY) 90) until 1 October 1992 (FY 93). For example: on the first day of the second quarter of FY 92 (1 Jan 92) the actual number of military personnel assigned to Fort Dix was 733; and on the first day of the first quarter of FY 93 (1 Oct 92), the actual number of military personnel assigned to Fort Dix was 457.

As illustrated by Enclosure 3, 4, and 5, Fort Dix underwent significant changes during the implementation of BRAC, including an 89% reduction in the authorized permanent party military strength, from 2089 to 246. As a result of BRAC, the mission of Fort Dix has also changed from primarily a basic and advanced

individual training (AIT) facility to a reserve training and tenant support facility.

I swear the above information and enclosures are true and accurate to the best of my knowledge.

/s/ Robert W. North
ROBERT W. NORTH
MAJ, OD
Acting Director
Base Realignment Office

STATE OF NEW JERSEY))
))
COUNTY OF BURLINGTON))

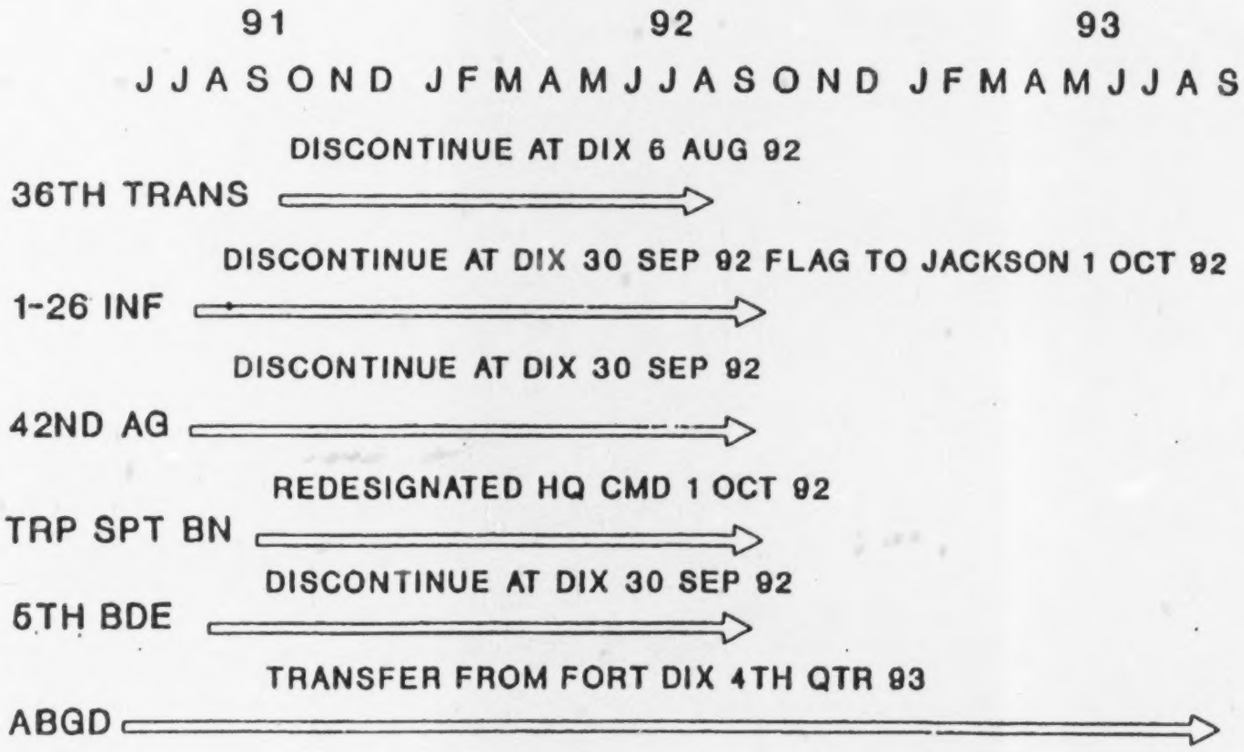
Subscribed and sworn before me this 17th day of March, 1993.

/s/ Claude I. Roe, Jr.
NOTARY PUBLIC
CLAUDE I. ROE, JR.
Notary Public, State of New Jersey
My Commission Expires December 26, 1994

RELOCATION MOVEMENT TIMELINES

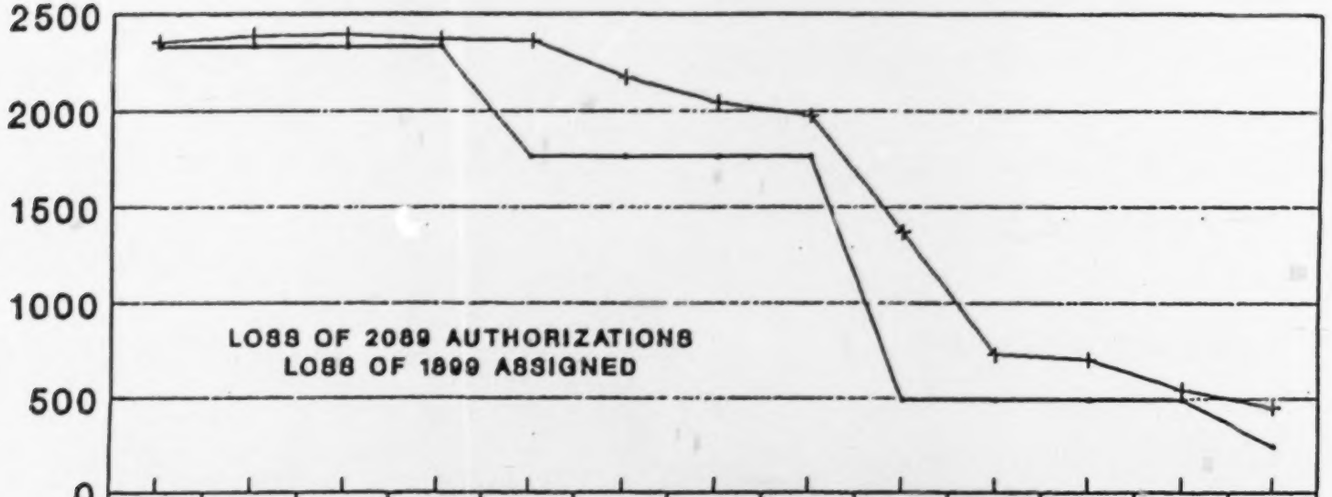
BN/BDE HQ's LEVEL

(AS OF 11 JUN 92)


91
92
93
J J A S O N D J F M A M J J A S O N D J F M A M J J A S O
DISCONTINUE AT DIX 6 AUG 92
36TH TRANS
DISCONTINUE AT DIX 30 SEP 92 FLAG TO JACKSON 1 OCT 92
1-26 INF
DISCONTINUE AT DIX 30 SEP 92
42ND AG
REDESIGNATED HQ CMD 1 OCT 92
TRP SPT BN
DISCONTINUE AT DIX 30 SEP 92
5TH BDE
TRANSFER FROM FORT DIX 4TH QTR 93
ABGD

ENCLOSURE 1

MILITARY STRENGTH
QUARTERLY, FY 90-93



	1/90	2/90	3/90	4/90	1/91	2/91	3/91	4/91	1/92	2/92	3/92	4/92	1/93
AUTH	2335	2335	2335	2335	1765	1765	1765	1765	493	493	493	493	246
ASGN	2356	2386	2394	2371	2366	2175	2048	1977	1373	733	706	546	457

AUTH ASGN

ENCLOSURE 2

UNITS INACTIVATED

- 2 BRIGADE HEADQUARTERS
- 6 BATTALIONS
- 30 TRAINING COMPANIES
- 12 HEADQUARTERS COMPANIES
- 1 COMBAT ENGINEER COMPANY
- 1 ARMY BAND

TOTAL OF 1,989 PERSONNEL

"REALIGNMENT UNDER FORSCOM EFFECTIVE 1 OCT 1992"

ENCLOSURE 3

RELOCATION MOVEMENT TIMELINES
(COMPANY LEVEL / AIT COURSE LEVEL)
(AS OF 9 MAR 92)

TYPE	DEPART / ARRIVE		FY 91 1 2 3 4	FY 92 1 2 3 4
BCT	DIX	LN WOOD	X (2 COS)	
BCT	DIX	JACKSON	COMPLETED	X (1 CO)
BCT	DIX	DISCONTINUE	X (16 COS) X (6 COS)	X (4 COS)
				X(1 CO)
77-F	DIX	LN WOOD	TNG CYCLES AT DIX COMPLETED	X (DEC 91) EQUIP SHIPPED
88-M	DIX	LN WOOD		X (DEC 91) EQUIP
63-B	DIX	JACKSON		X (JAN 92) BEING
94-B	DIX	LEE		X (JAN 92) MOVED
ABGD	DIX	KNOX/BENNING/MCCLELLAN		X X (JUN/ JUL 92)
NCOA	DIX	DISCONTINUE		X(30 SEP 92)
19TH ARMY BAND	DIX	DISCONTINUE		X(30 SEP 92)
D/39TH ENGR	DIX	DISCONTINUE		X(16 SEP 92)

ENCLOSURE 4

NET EFFECT SINCE 1990
DECREASES

89% MILITARY
PERM. PARTY
(2089)

53% CIVILIAN
PERSONNEL
(834)

47% DECREASE
IN DIRECT BUDGET
SINCE 1990
($ 40 M)

3.5% ACRES
LEASE & EXCESS
(1,084 ACRES)

43% AFH UNITS
(919 UNITS)

58.8% SQ FT
LEASE & EXCESS
(5,561,751 SQ FT)

ENCLOSURE 5

APPENDIX D

GO 25

GENERAL ORDERS
No. 25

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 16 *November 1992*

General Courts-Martial

The Commander, United States Army Garrison, Fort Dix, is designated by me, pursuant to the Uniform Code of Military Justice, Article 22(a)(8), to convene general courts-martial, effective 23 October 1992.

[DAJA-CL]

/s/ M. P. W. Stone
M. P. W. STONE
Secretary of the Army

DISTRIBUTION:

Active Army, Army National Guard, and U.S. Army Reserve: To be distributed in accordance with DA Form 12-04-E (block 0037), requirements for Department of the Army General Orders.

APPENDIX E

GO 3

GENERAL ORDERS } HEADQUARTERS
DEPARTMENT OF THE ARMY
No. 3 WASHINGTON, DC, 19 *January 1981*

GENERAL COURTS-MARTIAL. 1. Effective 19 January 1981, the commanding officers of the following installations and commands are designated by me, pursuant to the Uniform Code of Military Justice, Article 22(a)(6), as general court-martial convening authorities.

US Army Training and Doctrine Command
US Army Training Center & Fort Dix
US Army Armor Center & Fort Knox
US Army Engineer Center & Fort Belvoir
US Army Transportation Center & Fort Eustis
US Army Quartermaster Center & Fort Lee
Fort Lee
US Army Signal Center & Fort Gordon
US Army Infantry Center & Fort Benning
US Army Aviation Center & Fort Rucker
US Army Training Center & Fort Jackson
US Army Soldier Support Center and Fort Benjamin Harrison
US Army Air Defense Center & Fort Bliss
US Army Combined Arms Center & Fort Leavenworth
US Army Field Artillery Center & Fort Sill
US Army Training Center, Engineer & Fort Leonard Wood
US Army Military Police and Chemical Schools/Training Center & Fort McClellan
New York Area Command & Fort Hamilton
US Army Forces Command
Fort McPherson

Fort George G. Meade
Fort Sam Houston
Presidio of San Francisco
Fort Devens
101st Airborne Division (Air Assault) & Fort Campbell
XVIII Airborne Corps & Fort Bragg
Fort Sheridan
III Corps and Fort Hood
Fort Hood
1st Infantry Division (MECH) & Fort Riley
US Army Retraining Brigade
9th Infrantry Division & Fort Lewis
Fort Carson & 4th Infantry Division (MECH)
172d Infantry Brigade (Alaska)
193d Infantry Brigade (Panama)
7th Infantry Division and Fort Order
5th Infantry Division (MECH) & Fort Polk
24th Infantry Division (MECH) & Fort Stewart
United States Army, Europe & Seventh Army
1st Infantry Division (MECH) (FORWARD)
32d Army Air Defense Command
US Army, Berlin
US Army Southern European Task Force
21st Support Command (TAACOM)
2d Armored Division Forward
2d Armored Division (REAR) (PROVISIONAL)
US Army Western Command
US Army Support Command, Hawaii
US Army, Japan
US Army Garrison, Okinawa
US Army Element, Combined Field Army (ROK/US)
19th Support Command
US Army Materiel Development and Readiness Command (DARCOM)

US Army Communications & Electronics Materiel Readiness Command
US Army Troop Support & Aviation Materiel Readiness Command
Aberdeen Proving Ground
US Army Test & Evaluation Command
US Army White Sands Missile Range
US Army Missile Command
US Army Military District of Washington
Military Traffic Management Command
Military Traffic Management Command, Eastern Area
Military Traffic Management Command, Western Area
Ballistic Missile Defense Organization
Ballistic Missile Defense Systems Command
US Army Element, HQ, US Readiness Command
US Army Communications Command (USACC)
Fort Huachuca
US Army Health Services Command
US Army Element, Field Command, Defense Nuclear Agency
US Army Element 9240, Joint Task Force Eight

2. General court-martial jurisdiction under the above provisions is also granted to:

Superintendent, United States Military Academy
Commandant, US Disciplinary Barracks, Fort Leavenworth

[DAJA-CL]

/s/ Clifford L. Alexander, Jr.
CLIFFORD L. ALEXANDER, JR.
Secretary of the Army

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